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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 NEW FLYER INDUSTRIES CANADA ULC,
10 and NEW FLYER OF AMERICA INC.,

11 Plaintiffs,

12 v.

13 RUGBY AVIATION, LLC d/b/a SAN JUAN
14 AIRLINES,

15 Defendant.

Case No. 2:18-CV-299-RSL

ORDER DENYING
DEFENDANT'S MOTION
TO REMOVE
CONFIDENTIALITY
DESIGNATIONS AND
GRANTING CONTINGENT
MOTION TO SEAL

16 This matter comes before the Court on the "Motion to Remove Confidentiality
17 Designations and Contingent Motion to Seal" filed by defendant Rugby Aviation, LLC d/b/a
18 San Juan Airlines ("San Juan Airlines"). Dkt. #48.

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20 **BACKGROUND**

21 San Juan Airlines' motion for summary judgment, Dkt. #42, refers to various materials
22 that plaintiffs New Flyer Industries Canada ULC, along with its subsidiary, New Flyer of
23 America Inc. (together, "New Flyer") have designated as "confidential" pursuant to their
24 Stipulated Protective Order. Dkt. #20. That order defines "Confidential" material as follows:

25 "CONFIDENTIAL" material shall include the following documents and tangible
26 things produced or otherwise exchanged: technical information, marketing and
27 business plans, databases, specifications, formulations, tooling, prototypes,
28 sketches, models, drawings, specifications, procurement requirements, engineering
information, samples, computer software (source and object codes), forecasts,

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1 financial information, including information on sales, costs, and/or profits, identity
2 of or details about actual or potential customers or projects, techniques, inventions,
3 discoveries, know-how and trade secrets.

4 Dkt. #20 at ¶ 2. The agreement does not apply to information that is in the public domain.
5 Id. at ¶ 3. San Juan Airlines’ motion concerns (1) several lines from the deposition of Jennifer
6 Moen, (2) an invoice for the creation of the New Flyer logo, (3) a list of buses New Flyer sold to
7 various customers, and (4) a flowchart. It requests that the confidentiality designations be
8 removed or, on a contingent basis, that the documents be sealed. Dkt. #48.

9 DISCUSSION

10 “There is a strong presumption of public access to the court’s files.” LCR 5(g). The
11 presumption is “based on the need for federal courts, although independent—indeed,
12 particularly because they are independent—to have a measure of accountability and for the
13 public to have confidence in the administration of justice.” Ctr. for Auto Safety v. Chrysler Grp.,
14 LLC, 809 F.3d 1092, 1096 (9th Cir. 2016) (citation omitted). A “court may seal records only
15 when it finds a compelling reason and articulates the factual basis for its ruling, without relying
16 on hypothesis or conjecture.” Id. at 1096–97 (citation and internal quotation marks omitted).
17 What constitutes a compelling reason is “best left to the sound discretion of the trial court.” Id.
18 at 1097 (quoting Nixon v. Warner Commc’ns, Inc., 435 U.S. 589, 599 (1978)).

19 A party seeking to seal a document must provide a “specific statement of the applicable
20 legal standard and the reasons for keeping a document under seal, including an explanation of
21 [1] the legitimate private or public interests that warrant the relief sought; [2] the injury that will
22 result if the relief sought is not granted; and [3] why a less restrictive alternative to the relief
23 sought is not sufficient.” LCR 5(g)(3)(B); see Dkt. #52 at 4–5.

24 **A. Moen Deposition Testimony**

25 The Court has already denied San Juan Airlines’ previous motion to remove the
26 confidentiality designations on these portions of Jennifer Meon’s deposition testimony. Dkt. #66
27 at 9–10. New Flyer does not assert that the identities of its Washington customers are
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1 confidential, only the identity of the employee selected to manage them. Dkt. #52 at 6.
2 Moreover, it is not clear why San Juan Airlines needed to refer to Ms. Moen's testimony
3 specifically to make the point that New Flyer does not sell buses to Whatcom Transportation
4 Authority. See Dkt. #46 at ¶ 15; Ex. 1, Dkt. #46-1 at 49:1–50:25, 185:18–186:5.

5 **B. New Flyer Invoice**

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7 New Flyer designated as confidential an invoice dated March 31, 2004 concerning the
8 development of its logo and tagline. Ex. 1, Dkt. #49-1 at 64. As the invoice relates to New
9 Flyer's marketing and finances, the Court finds that it should be kept confidential. See Evans v.
10 DSW, Inc., No. CV1603791JGBSPX, 2019 WL 91835, at *3 (C.D. Cal. Jan. 2, 2019); Dkt. #52
11 at 8. More importantly, the Court did not refer to the invoice at all in its ruling. It was irrelevant.
12 In re iPhone Application Litig., No. 11-MD-02250-LHK, 2013 WL 12335013, at *2 (N.D. Cal.
13 Nov. 25, 2013) ("In granting Defendant's Motion for Summary Judgment ... , the Court did not
14 rely on any of the material the parties seek to seal. Because the documents that are the subject of
15 [the motion to seal] are unrelated to the Court's reasoning in its ... Order, public access to these
16 records will not further the public's understanding of the reasoning underlying the Court's
17 decision.") (citing Apple Inc. v. Samsung Elecs. Co., 727 F.3d 1214, 1226 (Fed. Cir. 2013)).

18 **C. New Flyer List of Buses**

19 New Flyer designated as confidential a list, by year, of the number of buses and bus
20 models that it has sold to specific customers in Washington and Canada, as well as the pricing
21 associated with the sales. Ex. 1, Dkt. #49-1 at 69–70. It argues that although a member of the
22 public might be able to find out individual pieces of information within the document, see Dkt.
23 #48 at 7, New Flyer "prepared this analytical compilation so that it [could] evaluate all of its
24 customer sales with this single snapshot." Dkt. #52 at 9. If made public, it would cause
25 competitive harm to New Flyer. Id. at 9–10. The Court agrees. More importantly, the Court did
26 not refer to the list at all in its ruling. It was irrelevant. See Apple Inc., 727 F.3d at 1226
27 (concluding that the public had "minimal interest in [the sealed] information" where it was not
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1 considered by the jury in arriving at its award or the Court in its rulings on pretrial motions and
2 was therefore “not necessary to the public’s understanding of the case”).

3 **D. New Flyer Flowchart**

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5 Finally, New Flyer designated as confidential a flowchart that was last revised on
6 November 2014. Ex. 1, Dkt. #49-1 at 67. San Juan Airlines offered to redact everything on the
7 document except the New Flyer logo at the top and the title of the document. The Court agrees
8 with New Flyer that this redaction would serve little purpose. Aevoe Corp. v. AE Tech. Co., No.
9 2:12-CV-00053-GMN, 2013 WL 2302310, at *1 (D. Nev. May 24, 2013) (“the Court finds that
10 redaction would not leave meaningful information available to the public, so the entirety of
11 these documents may be filed under seal.”). Again, the Court did not refer to this flowchart at all
12 in its ruling on the motion for summary judgment. In re iPhone Application Litig., 2013 WL
13 12335013 at *2; Apple Inc., 727 F.3d at 1226.

14 Balancing the competing interests of the public and New Flyer, the Court finds that the
15 material should be kept sealed. Ctr. for Auto Safety, 809 F.3d at 1097.¹

16 **CONCLUSION**

17 For all the foregoing reasons, San Juan Airlines’ motion to remove confidentiality
18 designations is DENIED, and its contingent motion to seal is GRANTED.

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20 DATED this 3rd day of September, 2019.

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23 Robert S. Lasnik
24 United States District Judge
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28 ¹ New Flyer’s request for sanctions, however, is denied. See Clearly Food & Beverage Co. v. Top Shelf Beverages, Inc., No. C13-1763JLR, 2015 WL 1263339, at *2 (W.D. Wash. Mar. 18, 2015).